

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM**

**Complaint no.:** 4342 of 2024  
**Date of complaint:** 12.09.2024  
**Date of decision:** 20.01.2026

Anshu Sehgal

**R/o:** Plot No. H1 H2 Flat no. UGF 1 Krishna Garden  
Govindpuram Ghaziabad

**Complainant**

**Versus**

M/s Desi Construction Private Limited

**Regd. Office At:** - 806, 807 Sky Tower Netaji Subhash  
Place, Pitampura Delhi North East DL 110034

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Phool Singh Saini

**Chairman**  
**Member**

**APPEARANCE:**

Ms. Nisha Gaur (Advocate)  
Shri Rahul Mangla (Advocate)

**Complainant**  
**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Tathastu II", Sector-5, Village- Sohna Gurugram
2.	Nature of the project	Affordable Housing Project
3.	HRERA registered/ not registered	Registered as 20 of 2023 dated 30.01.2023
4.	Allotment letter dated	24.04.2023 (as per page 29 of complaint)
5.	Date of execution of flat buyer's agreement	23.11.2023 (As per on page no. 32 of the complaint)
6.	Unit no.	T2-1701 on 17 <sup>th</sup> floor, tower 2 (As per on page no. 38 of the complaint)
7.	Carpet Area	645.818 sq. ft. (As per on page no. 26 of the complaint)
8.	Possession clause of agreement	<i>7.1 Schedule for possession of the said Plot / Unit / Apartment for Residential / Commercial / Industrial / IT/ any other usage-The Promoter agrees and understands that timely delivery of possession of the Plot/ Unit/ Apartment for Residential/ Commercial/Industrial/IT/any other</i>



*usage (as the case may be along with parking (if applicable) to the Allottee (sand the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule2(1)(f) of Rules,2017 is the essence of the Agreement.*

*The promoter assures to handover possession of Plot/Unit/ Apartment for Residential/Commercial/Industrial/IT/ any other usage (as the case may be) along with parking (if applicable) as per agreed terms and conditions unless there is delay due to 'force majeure', 'court orders', Government Policy/ guidelines, decisions affecting the regular development of real estate projects. If, the competition of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of Plot/Unit/Apartment for residential/commercial/industrial/ IT/ any other usage (as the case may be).*

*(As per page 36 of complaint)*

9.	Possession clause of Affordable Housing Policy	<b>(iv)</b> All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. [xxxxxx]
10.	Date of environment clearance	09.02.2023 (As information provided by the planning branch)
11.	Building Plans	23.01.2023 (Information provided by the planning branch)
12.	Due date of delivery of possession	09.02.2027 <b>(Note:</b> Due date to be calculated 4 years from the date of EC i.e., 09.02.2023 being later as per Affordable Group Housing Policy, 2013)
13.	Total consideration	Rs. 25,57,686/- (As per page no. 38 of the complaint)
14.	Total amount paid by the complainant	Rs.12,78,843/- (As per SOA at page 51 of reply)
15.	Reminder/ Demand letters dated	10.08.2023, 20.04.2024, 23.05.2024, (Page 13-15 of reply)
16.	Publication in the Newspaper	05.08.2024 (As per the documents submitted by the respondent)
17.	Cancellation Letter dated	05.08.2024 (As per page no. 66 of the complaint)
18.	Amount refunded by the respondent	Rs. 7,95,778/-

		(As stated by the respondent at page 5 of reply and stated by the complainant vide proceedings dated 20.03.2025)
19.	Occupation Certificate	Not Obtained
20.	Offer of possession	Not offered

### **B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- i. That the respondent had invited an application for booking in their Affordable Housing Project and vide application No. T2APP/83715/23-24 dated 24.4.2023, the complainant applied for booking of the unit. The draw was conducted in presence of Officials of Authority constituted by State of Haryana wherein the complainant was successfully allottee on the said draw.
5. That the allotment letter dated 24.4.2023 was issued by the respondent company alleging the apartment booked as T-2, 1701, having carpet area 3800/- sq feet of floor 17 in tower No. - T-2, at the rate 645.818 sq ff of Rs. 3800 per sq feet as basic sale price and balcony area of 78.254 sq ft at the rate of Rs. 1000/- per sq feet, total sale consideration amounting to Rs. 25,57,686/-/- (excluding taxes and other charges).
- ii. That the builder buyer agreement was executed and registered on 23.11.2023 between the parties alleging the flat no. t-2, 1701, having carpet area 3800/-sq ft of floor 17 in tower no. - t-2, at the rate of Rs. 3800 per sq feet as basic sale price and balcony area of Rs. 1000/- per sq feet/- as mentioned in the builder buyer agreement. The complainant paid total Rs. 10,89,422/-- (Including all Government taxes and charges as and when demanded by the respondent company. The remaining amount to be paid by the complainant as per annexure b of the agreement mentioned at page no. 25 of the agreement.

- iii. That it has been specifically mentioned in clause 1.4 at page 6 of the agreement that " The allottee shall make the payment as per the payment plan set out in Schedule B( Payment plan).As per clause 1.10 of the agreement it has been specifically mentioned that "II, The balance 75% amount of the flat cost will be recovered as per the stages of construction to be prescribed in Schedule B". As per clause no. 7.1 of the builder buyer agreement, the possession was to be handed over as per prescribed under rule 2(1) (f) of rules 2017. Thus, keeping in view the HRERA Registration Certificate, the possession to the complainant was to be handed over on or before 14.11.2027 as per builder buyer agreement.
- iv. The respondent taking undue advantage of dominant position, is bent upon to cancel the unit. Thus, there is no malafide intention of the complainant for paying any outstanding amount but it is the respondent company who had failed to performance its part of contract by adhering terms of builder buyer agreement as well as Affordable Housing Scheme 2013 in demanding payment from the complainant and taking undue advantage of escalation in price at the said area, is bent upon to cancel the unit arbitrary and unilaterally on the ground of nonpayment of outstanding dues and is threatening to create third party right in the said unit. This act and conduct of the respondent company shows that major deficiency of the service and unfair trade practice opted to make fool of the gullible customers by delaying the construction of the project.
- v. That the complainant had to make the payment of Rs. 3,50,000/- on 13.8.2024 as per demand raised by the respondent but builder refused to receive the amount. Even then also the respondent company has not restore the unit and threatening for creating third party rights against the said unit which is completely against the law and principle of natural justice.

- vi. That the complainant is/ has always been ready and willing to perform his part of contract as per terms of the builder buyer agreement but it was the respondent company who has failed to perform its part of contract by not constructing the tower- 2 at desired level and raising demand of that level of construction illegal, and arbitrary. The said demand raised by the respondent company is against the principle of natural justice and against the law and facts. The complainant has sufficient funds to pay the outstanding amount but the respondent has not constructed the tower at that level as mentioned in Schedule B of payment plan of builder buyer agreement. There is no default in payment to be paid by the complainant and the respondent company has not completed the project as per stipulated time mentioned in the builder buyer agreement and as per Affordable Housing Scheme 2013.
- vii. That the demand raised by the respondent company is completely vague, illegal and not as per the level of construction but being in a dominant position, the respondent company is bent upon to cancel the unit and refunding the amount to the other allottees. The builder buyer agreement is registered document before the sub- registrar of the concerned area and it cannot be cancelled without cancelling the said agreement. The said agreement can only be cancelled by Civil Court. It is imperative to mention here that the complainant is seeking possession of the unit with a dream to have one residential property at City Gurugram but the act and conduct of the respondent company is completely against the terms and condition of the agreement and Affordable housing scheme 2013.
- viii. The complainant after exhausting all her patience had lastly contacted to the respondent representative to set aside the said cancellation letter dated 13.8.2024 via email and restore the unit to its original number but no fruitful answer has been replied by the respondent and its officials. Also filed a

complaint against the respondent in the police station and police officer said that she will send the report in the HARERA. Hence, the cause of action has arose to the complainant to file the present complaint before the Hon'ble Authority.

- ix. That according to the relief claimed by the complainant, this Hon'ble Forum has got Jurisdiction to try the present complaint. The complainant reserves their right to seek Rs. 10,00,000/- compensation towards harassment, mental agony and Rs. 65,000/- as litigation cost incurred by them, from the promoter for which they shall make separate application before the Adjudicating Officer, if required.

**C. Relief sought by the complainant: -**

4. The complainant has sought following relief(s):
- i. Direct the respondent to not to create third party rights till final completion of project.
  - ii. Direct the respondent to set aside the cancellation letter dated 13.08.2024 and restore the unit to its original number and issue demand as per the builder buyer agreement.
5. To On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the complainant.**

6. The respondent has contested the complaint on the following grounds.
- i. That this Hon'ble Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
  - ii. That it has been admitted fact by the complainant himself that he has been allotted the unit no. t2-1701 tower no t-1 on 2nd floor by the respondent after the allotment letter was issued to the complainant. The said allotment

was done by the respondent after the filing of the application by the complainant to the respondent.

- iii. That the complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due instalment against the intimation cum demand letter dated 15.03.2024. Moreover, the respondent had issued reminder on 20.04.2024 and 23.05.2024 against the outstanding due instalment to the complainant but the complainant had failed to make timely payments of the due instalments. Consequently, the respondent had issued a cancellation letter against the subject. flat no. t2-1701 tower no t-1 on 2nd floor in the project Tathastu - I located at Sector 5, Sohna, Gurgaon, Haryana to the complainant dated 05.08.2024 as per the mutually agreed terms and conditions of the registered builder buyer agreement/ agreement for sale dated 23.11.2023 and the Affordable Housing Policy, 2013.
- iv. That the complainant has made default in making the payment of sale consideration on the false and frivolous grounds. It is stated that the respondent is constructing the site as per the law and commitments made to the entire public at large. It is further pertinent to mention here that apart from that the Hon'ble Authority is empowered to monitor the construction and progress over the project site of the respondent/ builder from time to time and there have been no lapse and other lacunas have been identified by the Hon'ble Authority with regard to the construction status of the said project.
- v. That in builder-buyer agreements, time is of the essence, and delays in payment by one buyer adversely affect the entire project timeline and the interests of other buyers who have made timely payments. The respondent has contractual and legal obligations towards other stakeholders in the

project and cannot allow one defaulting buyer to jeopardize the completion of the project within the promised timeline. The cancellation has been effected in accordance with the terms of the builder-buyer agreement and applicable laws. The respondent has exercised its legitimate contractual right to terminate the agreement due to material breach by the complainant. The acceptance of partial payments does not constitute a waiver of the respondent's right to cancel for subsequent defaults, particularly when the breach is continuing and substantial.

- vi. That all the cancellations are duly intimated through all modes such as speed post and email and telephonically. It is pertinent to mention that as per the builder buyer agreement the buyer i.e., complainant has himself breached the clauses of the application form, builder buyer agreement from march 2024 to august 2024, about 144 days were given as per law despite the fact the complainant has done the willful default. The plea of the complainant with respect to 7 days is totally contrary general clauses. act, Contract act, builder buyer agreement and the affordable housing policy. In the instant matter the breach has been committed by the complainant as the respondent is working under the umbrella of this Hon'ble authority and DTCP, Haryana.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the Authority**

8. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I Territorial jurisdiction**

9. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **E.II Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

.....

(4) *The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation, which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

#### **F. Findings on the relief sought by the complainant.**

**F.I Direct the respondent to not to create third party rights till final completion of project.**

**F.II Direct the respondent to set aside the cancellation letter dated 13.08.2024 and restore the unit to its original number and issue demand as per the builder buyer agreement.**

12. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

13. The complainant was allotted unit no. t2-1701 on 17<sup>th</sup> floor in tower 2 in the project "Tathastu II" by the respondent/builder for a total sale consideration of Rs.25,57,686/- under the Affordable Group Housing Policy 2013. The buyer's agreement was also executed on 23.11.2023 interse parties. That as per the Affordable Group Housing Policy 2013, the possession of the unit was to be offered with 4 years from approval of building plans (23.01.2023) or from the date of environment clearance (09.02.2023). Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 09.02.2027. The complainant has paid a sum of Rs.9,67,940/-. The complainant is willing to retain the allotted unit in question.

14. The respondent states that the unit has been cancelled after issuance of demand letter dated 20.04.2024 and 23.05.2024. Upon this, the complainant submitted that the cancellation done by the respondent is illegal and the construction is not yet done. Yet the respondent is threatening to cancel the unit and create third party rights.

15. Now, the question before the Authority is whether this cancellation letter dated 05.08.2024 and the publication for list of defaulters in the newspaper dated 05.08.2024 is valid or not. According to Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

*“If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. **If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled.** In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list”.*

16. It is observed that the complainant failed to pay the remaining amount as per the demand letter dated 10.08.2023, 24.04.2024 and 23.05.2024 served upon the complainant. and after this published a notice in the newspaper on 05.08.2024, and thereafter a notice for cancellation by the respondent on 05.08.2024.
17. However, as per Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013, reproduced hereinabove, it is clearly stipulated that after publication of the list of defaulters in the newspaper, a period of 15 days is required to be granted to the concerned allottee to clear the outstanding dues, failing which the allotment is liable to be cancelled.
18. In the present case, the respondent published the list of defaulters in the newspaper on 05.08.2024, wherein the name of the complainant was reflected. It is further observed from the record that the allotment of the unit in question was cancelled vide letter dated 05.08.2024. The complainant has also stated that the respondent vide email dated 13.08.2024 sent an email that the unit is cancelled as per the Affordable Housing Policy.
19. After perusal of the documents available on record, it becomes apparent that the date of publication of the list of defaulters and the date of cancellation of the allotment is the same. Such action on the part of the respondent is in clear contravention of Clause 5(iii)(i) of the Affordable Group Housing Policy,

2013, which mandates that a period of 15 days must be granted to the allottee after publication of the defaulters' list before any action for cancellation of the allotment can be taken. Also, the email of 13.08.2024 is not in accordance with the policy as still the time period of 15 days was not over. Therefore, the action of the respondent in cancelling the allotment on the very same day as the publication of the defaulters' list is arbitrary, unjustified. Consequently, the cancellation done by the respondent in this case invalid and is hereby set aside.

20. Further, during proceedings dated 20.01.2026, the counsel for the respondent has made the two submissions. Firstly, that after the cancellation of the said unit, third-party rights have been created and the said unit was allotted to Mr. Amit Kumar as per the document submitted by the respondent. In view of the same, due to non-availability of the originally allotted unit, the respondent is directed to offer an alternate unit of the same size, at similar location, at same rate as agreed at the time of allotment.
21. Secondly the counsel for the respondent has stated that after cancelling the unit of the complainant in the present case, the respondent has refunded an amount of Rs 7,95,778/- to the complainant. Further as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale.

#### **G. Directions of the Authority**

22. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act:

- i. The cancellation letter dated 05.08.2024, is not valid and is hereby set aside. Due to non-availability of the originally allotted unit the

respondent is directed to offer an alternate unit of the same size, at similar location, at same rate as agreed at the time of allotment within a period of 30 days from the date of this order and also issue a fresh statement of account as per agreed payment plan.

- ii. The complainant is directed to make the outstanding payment as per the agreed Affordable Housing Policy, 2013.
  - iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter as per section 2(za) of the Act.
  - iv. The respondent shall not charge anything from the complainant which is not the part of the Affordable Housing Policy, 2013 as well as buyer's agreement.
23. The complaint stand disposed of.
24. File be consigned to registry.



**(Phool Singh Saini)**

**Member**



**(Arun Kumar)**

**Chairman**

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated:20.01.2026**